IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

TRC.No. 216 of 2001()

AITA.59/2000 OF SALES T TAX APPELLATE TRIBUNAL,
ADDL.BENCH,KOZHIKODE

PETITIONER: RESPONDENT:RESPONDENT: REVENUE:

STATE OF KERALA, REPRESENTED BY
DEPUTY COMMISSIONER (LAW)]
COMMERCIAL TAXES, ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES
SRI.V.V.ASHOKAN

RESPONDENT: APPELLANT:APPELLANT:ASSESSEE:

M/S.KANJI MOORARJI,
COPRA BAZAR, KOZHIKODE.

BY ADV. SRI.K.SRIKUMAR

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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TAX REVISION CASE No. 216 OF 2001

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Dated this the 12th June, 2007

ORDER

H.L. Dattu, C.J.:

A simple question of law arises in this Tax Revision Case. The question is, whether the coconut oil and refined coconut oil are one and the same commodities and if it so, are they entitled for exemption as provided in S.R.O.No.1731 of 1993.

2. The assessment year in question is 1994-95. The assessee is a dealer in refined coconut oil made out of coconut oil. The assessee has effected Inter-State sale of the refined coconut oil and had claimed exemption under Schedule II of SRO. 1731 of 1993 . The said claim was rejected by the assessing authority and the view of the assessing authority was accepted by the first appellate authority . But the Kerala Sales Tax Appellate Tribunal has reversed the findings and conclusions reached by the first appellate authority as well as the assessing authority. That is how, the Revenue is before us in this Tax Revision Case filed under section 41 of the Kerala General Sales Tax Act. The Revenue has raised the following questions of law for our consideration and decision. They are as under:

> *"a) Is not the Tribunal correct in law in holding that coconut oil and refined coconut oil are one and the same*

commodity and consequently eligible for exemption provided in SRO. 1731 of 1993?

b) Since coconut oil and refined coconut oil have been treated as two distinct commodities even under the statute , is the Tribunal justified in assuming that the connotation "coconut oil" appearing in SRO 1731 of 1993 would take in refined coconut oil as well?"

3. Shri V.V. Asokan, learned Special Government Pleader for Taxes would contend, that, since legislature itself has treated the coconut oil and refined coconut oil as two separate commodities under Schedule II of the Act, the same view has to be taken by this Court and has to be treated both coconut oil and refined coconut oil as two different commodities. Secondly, what is exempted under SRO 1731 of 1993 is only coconut oil and not refined coconut oil and therefore the Tribunal was not justified in granting the relief to the assessee by applying the notification SRO 1731 of 1993 , he contends.

4. Per contra, learned counsel for the assessee would contend that there is no essential distinction between coconut oil and refined coconut oil. Refined coconut oil is nothing but coconut oil where impurities are taken out by adopting a small process and even thereafter, it would continue to be one and the same commodities. Therefore, the Tribunal was justified in applying the notification SRO.

1731 of 1993 for granting exemption of Inter- State sale effected by the assessee. In aid of his contention, the learned counsel has invited our attention to the observations made by the Apex Court in **Tungabhadra Industries Ltd. vs. Commercial Tax Officer ((1960) XI STC 827)** , **Sterling Foods v. the State of Karnataka and another ((1986) 63 STC 239), Jain Exports (P) Ltd. & another vs. Union of India and others ((1988) 26 STL 6 (SC), Rajasthan Roller Flour Mills Association vs. State of Rajasthan ((1993) 91 STC 408), State of Karnataka vs. Sri Lakshmi Coconut Industries ((1997) 107 STC 566), Vishista Solvent Oils Pvt. Ltd vs. Deputy Commissioner of Commercial Taxes ((2001) 121 STC 492), B.P. Oil Mills Ltd. vs. Sales Tax Tribunal (1998)111 STC 188 (SC) and ITC Agro Tech Ltd. vs. Commissioner of Trade Tax ((2000) 120 STC 402)**

5. To answer the question of law framed by the Revenue reference to SRO 1731 of 1993 dated 3rd November 1993 requires to be made. The same is as under:

> *"SRO 1731/93: In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) and in supersession of the notifications mentioned in Schedule I, the Government of Kerala being satisfied that it is necessary in the public interest so to do, hereby direct that the tax payable under the Act,-*
> *1. by any dealer having his place of business in the State of*

Kerala in respect of the sales by him , in the course of inter-state trade or commerce, from any such place of business.
(i) In respect of goods mentioned in column (2) Schedule II shall be calculated at the rates specified in column (3) subject to the conditions and restrictions if any set out in column (4) thereof, against each; and
(ii) in respect of goods mentioned in column (3) of Schedule III to the persons or class of persons specified in column (2) there of shall be calculated at the rate specified in column (4) subject to the conditions and restrictions specified in column (5) thereof, against each:
2. by the persons or class of persons mentioned in column (2) of Schedule IV having their place of business in the State of Kerala in respect of the sale of goods mentioned in column (3) in the course of inter-state trade or commerce shall be calculated at the rate specified in column (4) subject to the conditions and restrictions specified in column (5) thereof, against each.

SCHEDULE II

Sl. No.	Details of goods	Rate of tax per cent	Conditions/restrictions
1.	Aluminium extrusions	4	Nil.
xx	xx	xx	xx
6.	Coconut Oil	Nil	When tax has been levied under the Kerala General Sales Tax Act 1963 (15 of 1963) on its first sale in the State.
7.	Coconut Oil	2	Nil.
Xx	xx	xx	xx

6. Before we proceed further, we will make reference to the decisions relied on by the learned counsel for the assessee.

7. In Tungabhadra Industries' case, the question before the Apex Court was whether raw groundnut oil converted in to refined oil would become anything other than groundnut oil. The court held that refined groundnut oil continues to be groundnut oil notwithstanding that such oil does not possess the characteristic colour or taste or odour etc. of the raw groundnut oil.

8.. In Sterling Foods' Case, the question before the court was whether shrimps, prawns and lobsters subjected to processing like cutting of heads and tails, peeling, deveining, cleaning and freezing cease to be the same commodity and become a different commodity within the meaning of Section 5 of Central Sales Tax Act. The court held that the processed shrimps, prawns and lobsters are not a new and distinct commodity, but may retain the same character as the original shrimps, prawns and lobsters even after processing.

9. In Jain Exports (P) Ltd. case, the Apex Court held that in Appendix 9, no classification of coconut oil is given and therefore all varieties of coconut oil should be taken as covered by the term. There is no warrant for the assumptions that item I of paragraph 5 of Appendix covered only the edible variety when coconut oil as such

has been mentioned. It is not disputed that "coconut oil" without anything more could cover both edible as also the non-edible (commercial or industrial varieties). When a customer goes to the market and asks for coconut oil to buy, he is not necessarily supplied the edible variety. Coconut oil is put to less of edible use than non-edible.

10. In Rajasthan Roller Flour Mills Association's case , the question before the Apex court was that whether Flour, maida and suji derived from wheat are not “wheat”. After a detailed discussion, the court was pleased to observe that when wheat is consumed for producing flour or maida or suji, the commodities obtained are different commodities from wheat Wheat loses its identity, it gets consumed and in its place new goods/commodities emerge. The new goods so emerging have a higher utility than the commodity consumed . They are different goods commercially speaking.

11. In the State of Karnataka Vs. Sri Lakshmi Coconut Industries case, the Supreme Court was concerned with the question whether desiccated coconut is coconut or not. After consideration of the issue with reference to the provisions of the Central Sales Tax Act, it was observed that desiccated coconuts are the same as coconuts and that they continues to be one and the same commodity.

12. In ITC Agro Tech Ltd. Case, the precise question that arose for consideration of the court was whether refined mustard oil and refined sunflower oil would fall under entry "oils of all other kind, not falling in any other entry". In that decision, the court was pleased to observe that refined mustard oil and refined sunflower oil would have the same characteristics of the mustard oil and sunflower oil.

13. Keeping in view the several decisions so cited before us by the learned counsel for the assessee, let us consider the issues voiced by the Revenue in this memorandum of Tax Revision Case. Let us take the second issue first.

14. Learned Special Government Pleader for Taxes, Shri V.V. Asokan would submit, that, since the legislature has treated the coconut oil and refined coconut oil as separate commodities for the purpose of taxation under the Kerala General Sales Tax Act , the same treatment should be adopted by this court also. Answer to this issue need not detain us for long. The Supreme Court, in Sterling Food case, has observed after processing of a commodity whether it retain therein original character or identity or become a new commodity has to be determined not on the basis of the distinction made by the legislature for the purpose of exigibility to State Sales Tax, because even where the commodity is the same in the eyes of the persons dealing in it, the

State legislature may make a classification for determining liability to sales tax. This question, for the purpose of the Central Sales Tax has to be determined on the basis of what is commonly known or recognised in commercial parlance. In our view, the State legislature is competent to impose different rates of sales tax on a commodity depending on its form and it has the perfect competence to levy tax on one transaction of sale of the commodity in one form and when the goods undergoes a change in form and is then sold, such a re-sale also can be subjected to tax. Therefore, merely because the legislature for the purpose of taxation under the Act has put coconut oil and refined coconut oil under two separate headings, they do not become two commercially different commodities. Therefore, contention of the learned counsel cannot be accepted.

15. Now we can go back to the first issue, viz., whether the coconut oil and refined coconut oil are one and the same commodity .

16. While issuing SRO 1731 of 1993 dated 3rd November, 1993, the Government had exempted from payment of tax all Inter State sale of coconut oil. In the notification no classification of coconut oil is given. According to the assessing authority as well as the first appellate authority, the coconut oil and refined coconut oil are

two different commodities and therefore, the assessee is not entitled for exemption as provided in SRO 1731 of 1993. They would further state that the coconut oil undergoes a process and then a different product would emerge, viz. Refined coconut oil and therefore they are commercially two different commodities. In our view, the test which has to be applied for the purpose of determining whether a commodity subjected to processing retains its original character and identity, is whether the processed commodity is required in the trade by those who deal in it as distinct in identity from the original commodity or is regarded as the same commodity. (See Sterling Foods vs. State of Karnataka, 63 STC 239). This decision was followed in Deputy Commissioner of Sales Tax vs. Shiphy International, 69 STC 325. In the said decision it is observed that every processing does not bring about a change in the character and identity of the commodity, with each process it may experience a change and only when a change or series of changes take the commodity to the point where commercially it can no longer be regarded as the original, but a new and distinct commodity, it can be said that a new commodity has come into being.

17. Coconut oil, also known as coconut butter, is a tropical oil extracted from copra. The physical properties of coconut

oil is a fat consisting of about 90% saturated. There are two types of coconut oil. They are unrefined coconut oil and refined coconut oil. The unrefined coconut oil is derived from fresh coconuts. The unrefined coconut oil extracted from copra is not suitable for consumption and must be purified, that is refined. This is because the way most copra is dried is not sanitary. The standard end product made from copra is RBD coconut oil. RBD stands for refined, bleached and deodorized. High heat is used to deodorize the oil, and the oil is typically filtered through (bleaching) clays to remove impurities. Sodium hydroxide is generally used to remove free fatty acids and prolong shelf life. This is the most common way of mass-produce coconut oil. In spite of this process, it retains its original character and identity as coconut oil. In the instant case, the findings and conclusions reached by the authorities under the Act is that the coconut oil is subjected to certain process and therefore, new commercial commodity would emerge. It is difficult to accept this finding of the authorities under the Act. In our view, when a coconut oil is converted into refined coconut oil, it involves a process and by that process the quality of the oil is improved, but it continues to be a coconut oil. In refining, purification process is involved and nothing else. Therefore, it cannot be said that they are two different commercial commodities.

Apart from this, in the notification, no classification of coconut oil is made and therefore, all varieties of coconut oil could be taken as covered by the term.

18. In view of the above discussion, we are of the opinion that the Tribunal is justified in allowing the appeal holding that coconut oil and refined coconut oil are one and the same commodity and therefore, the assessee is entitled for exemption under SR) 1731 of 1993. In that view of the matter, even the first question of law framed by the Revenue requires to be answered against the Revenue and in favour of the assessee.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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